

El Progreso Del Desierto, Inc. and United Health Care Employees, National Union of Hospital and Health Care Employees, 1199-American Federation of State, County and Municipal Employees, AFL-CIO. Cases 21-CA-30134, 21-CA-30135, and 21-CA-30163

September 12, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND TRUESDALE

Upon charges filed by United Health Care Employees, National Union of Hospital and Health Care Employees, 1199-American Federation of State, County and Municipal Employees, AFL-CIO (the Union), on June 30 and July 12, 1994, the General Counsel of the National Labor Relations Board issued a consolidated complaint on May 23, 1995, against El Progreso Del Desierto, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file an answer.

On August 8, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On August 10, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 20, 1995, notified the Respondent that unless an answer were received by close of business July 28, 1995, a Motion for Summary Judgment would be filed. Nevertheless, as indicated above, the Respondent has failed to file an answer to the consolidated complaint.¹

¹ The consolidated complaint indicates that the parties entered into an informal settlement agreement of the charges on November 23, 1994, but that the Regional Director subsequently withdrew approval of the settlement on February 22, 1995, prior to issuance of the con-

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the operation of medical clinics providing outpatient medical care with facilities located at 82-423 Miles Avenue, Indio, California; 1293 Sixth Street, Coachella, California; 51-800 Harrison Street, Coachella, California; and 47-094 Van Buren Street, Indio, California. During the calendar year ending December 31, 1994, the Respondent, in conducting its operations, derived gross revenues in excess of \$250,000 and purchased and received at its Indio and Coachella, California facilities, goods, products, and materials valued in excess of \$5000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time nonprofessional employees employed by the Employer at its facilities located at (1) 82-423 Miles Avenue, Indio, California; (2) 1293 Sixth Street, Coachella, California; (3) 51-800 Harrison Street, Coachella, California; and (4) 47-094 Van Buren Street, Indio, California; excluding professional employees, managerial employees, guards and supervisors as defined in the Act.

On November 6, 1992, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since November 6, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

solidated complaint, because of the Respondent's failure to comply with the settlement. We take administrative notice that the settlement form used by the parties was Form-NLRB 4775, the standard informal settlement agreement, which expressly provides that approval of the settlement agreement "shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response." (Emphasis added.) Thus, any answer that may have been filed prior to the consolidated complaint would not remain extant. See *Donovan & Associates*, 316 NLRB 169 (1995), and cases cited therein.

The Respondent and the Union are signatories to a collective-bargaining agreement covering the period October 1, 1993, through September 30, 1996 (the agreement). Since about January 1, 1994, the Respondent has failed and refused to timely remit dues to the Union pursuant to the checkoff provision in the agreement.

In addition, about June 1, 1994, the Respondent changed the health insurance plan covering unit employees, completely discontinued dental and vision coverage, and ceased dental insurance plan coverage for the unit.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. Nevertheless, the Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

By letter dated May 25, 1994, the Union requested information concerning the employment status of Judith Sydney. In addition, by letter dated June 27, 1994, the Union requested a copy of the health plan instituted effective June 1, 1994, information on procedures for filing claims against Respondent's liability insurance carrier, and a copy of all of the Respondent's liability insurance policies, including but not limited to facility and premises liability, automobile liability, and business operations liability policies.

The foregoing information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Nevertheless, since about the respective dates set forth above, the Respondent has failed and refused to provide the Union with the requested information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) since about June 1, 1994, by unilaterally changing the health insurance plan covering unit employees, discontinuing dental and vision

coverage, and ceasing dental insurance plan coverage for the unit, we shall order the Respondent on request to restore the foregoing benefits, bargain on request with the Union regarding such benefits, and make whole the unit employees for any expenses incurred by them as a result of the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has also violated Section 8(a)(5) and (1) by failing, since January 1, 1994, to remit dues to the Union pursuant to the checkoff provision of the agreement, we shall order the Respondent to comply with the checkoff provision of the agreement and to remit all such withheld dues to the Union, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has also violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the information it requested on June 27, and May 25, 1994, which is necessary for, and relevant to, its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, El Progreso Del Desierto, Inc., Coachella and Indio, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the United Health Care Employees, National Union of Hospital and Health Care Employees, 1199-American Federation of State, County and Municipal Employees, AFL-CIO as the exclusive bargaining representative of the employees by unilaterally changing the health insurance plan, discontinuing dental and vision coverage, and ceasing dental insurance plan coverage for the employees in the following unit:

All full-time and regular part-time nonprofessional employees employed by the Employer at its facilities located at (1) 82-423 Miles Avenue, Indio, California; (2) 1293 Sixth Street, Coachella, California; (3) 51-800 Harrison Street, Coachella, California; and (4) 47-094 Van Buren Street, Indio, California; excluding professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Failing to comply with the 1993-1996 agreement by failing to timely remit dues to the Union pursuant to the checkoff provision of the agreement.

(c) Failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, its role as the exclusive bargaining representative of the unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, restore the medical, dental, and vision benefits for unit employees, bargain in good faith with the Union concerning such benefits, and make whole the unit employees for any expenses incurred as a result of its June 1, 1994 unilateral changes in such benefits, with interest, as set forth in the remedy section of this decision.

(b) Comply with the checkoff provision of the 1993-1996 agreement and remit all dues to the Union that have not been remitted since January 1, 1994, with interest, as set forth in the remedy section of this decision.

(c) Furnish the Union the information it requested on May 25 and June 27, 1994.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Coachella and Indio, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with the United Health Care Employees, National Union of Hospital and Health Care Employees, 1199-American Federation of State, County and Municipal Employees, AFL-CIO as the exclusive bargaining representative of the employees by unilaterally changing the health insurance plan, discontinuing dental and vision coverage, and ceasing dental insurance plan coverage for the employees in the following unit:

All full-time and regular part-time nonprofessional employees employed by us at our facilities located at (1) 82-423 Miles Avenue, Indio, California; (2) 1293 Sixth Street, Coachella, California; (3) 51-800 Harrison Street, Coachella, California; and (4) 47-094 Van Buren Street, Indio, California; excluding professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to comply with the 1993-1996 agreement by failing to timely remit dues to the Union pursuant to the checkoff provision of the agreement.

WE WILL NOT fail and refuse to furnish the Union with requested information that is necessary for, and relevant to, its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, restore the medical, dental, and vision benefits for unit employees; WE WILL, on request, bargain in good faith with the Union concerning such benefits; and WE WILL make whole the unit employees for any expenses incurred as a result of our June 1, 1994 unilateral changes in such benefits, with interest.

WE WILL comply with the checkoff provision of the 1993-1996 agreement and remit all dues to the Union that have not been remitted since January 1, 1994, with interest.

WE WILL furnish the Union the information it requested on May 25 and June 27, 1994.

EL PROGRESO DEL DESIERTO, INC.